

**MINUTES OF THE  
JUDICIARY INTERIM COMMITTEE**

Wednesday, May 21, 2014 – 9:00 a.m. – Room 215 Senate Building

**Members Present:**

Sen. Mark B. Madsen, Senate Chair  
Rep. Kay L. McIff, House Chair  
Sen. Lyle W. Hillyard  
Sen. Stephen H. Urquhart  
Rep. Patrice M. Arent  
Rep. LaVar Christensen  
Rep. Brian M. Greene  
Rep. Craig Hall  
Rep. Brian S. King  
Rep. Lee B. Perry  
Rep. Jeremy A. Peterson  
Rep. V. Lowry Snow

**Members Absent:**

Sen. Luz Robles

**Staff Present:**

Ms. Melinda Boulter, Policy Analyst  
Ms. Esther Chelsea-McCarty, Associate General Counsel  
Ms. Kristen C. Ricks, Legislative Secretary

**Note:** A list of other present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair McIff called the meeting to order at 9:18 a.m.

**MOTION:** Rep. Snow moved to approve the minutes of the November 20, 2013, meeting. The motion passed unanimously with Sen Hillyard, Sen. Madsen, Rep. Christensen, and Rep. Perry absent for the vote.

Chair McIff introduced Melinda Boulter and welcomed her to the committee.

Ms. Boulter highlighted sections of "Summary of Key Provisions of the Open and Public Meetings Act." She reminded the committee that the purpose of the act is to ensure the state and its agencies and political subdivisions exist to aid in the conduct of the people's business and, as such, a public body should deliberate and take action openly.

**2. Overview of 2014 Interim**

Ms. Boulter informed the committee of its three study items assigned by the Legislative Management Committee: (1) to study administrative actions related to orders of expungement and whether specified agencies should expunge records related to administrative proceedings connected to expunged convictions; (2) domestic asset protection trusts – to study the provisions in 2014 General Session H.B. 208 First Substitute, "Domestic Asset Protection Trust Agreements," and 2014 General Session H.B. 162, "Asset Protection Trust Amendments"; and (3) dual mode sentencing criminal justice reform – to study the implications of a new framework for felony-level sentencing, which would combine indeterminate and determinate practices into one sentence.

Ms. Chelsea-McCarty gave a brief overview of dual mode sentencing by reading a short description from the website [www.dualmodesentencing.org](http://www.dualmodesentencing.org). She explained that dual mode sentencing applies to adult felony convictions where a prison term is the likely punishment. She said it is a combination of determinate and indeterminate sentencing, where a convict is given two sentences at the same time. She responded to questions from the committee.

Mr. Robert S. Tippet, member of the Ad Hoc Legislative Committee of the Estate Planning and Elder Law sections, Utah State Bar, gave a brief overview of "Utah Asset Protection Trusts, Utah Code Title 25, Chapter 6, Section 14." He said that Utah asset protection trusts are unique, because they prohibit future creditors from reaching assets held inside a trust.

Rep. Earl D. Tanner discussed in further detail what an asset protection trust does. Specifically, he discussed exemptions and their purpose, which exist within the language of Utah Code Title 25, Chapter 6, Section 14. He responded to questions from the committee.

Ms. Boulter reminded the committee to fill out and prioritize the items on the "2014 Master Study Resolution Items Assigned to the Judiciary Interim Committee," which was included in the packet.

Ms. Boulter reviewed "2014 Statutory Reports Assigned to the Judiciary Interim Committee." She listed the names and deadlines of reports the committee was to study. She responded to questions from the committee.

### **3. Long-Term Planning Discussion – H.J.R. 10**

Ms. Boulter gave a brief overview of 2014 General Session H.J.R. 10, "Joint Rules Resolution Regarding a Long-Term Planning Conference."

Mr. Daniel J. Becker, State Court Administrator, distributed and presented, "Judiciary Interim Committee: Long-Term Planning Discussion – HJR 10." Mr. Becker informed the committee of filing trends and specific challenges faced by the court system. He also shared the court's planning principles and priorities: (1) to improve access and reduce the cost of access, (2) to strengthen the adjudicatory process for domestic relations cases, (3) to ensure the efficient use of existing resources, (4) to maintain a quality judiciary, and (5) to ensure improved outcomes. He responded to questions from the committee regarding the court's transition from paper filings to electronic filings and the effect mediation has had on the number of jury trials.

Mr. Rick Schwermer, Assistant State Court Administrator, Utah Administrative Office of the Courts, responded to questions from the committee regarding Utah court filing trends.

Sen. Hillyard reminded the presenters that practices in the third district may not be the same as they are in other court districts.

Mr. Curtis M. Jensen, President, Utah State Bar, informed the committee of bar member demographics. He pledged the bar's support of the new electronic court programs, such as electronic filing of court pleadings. He addressed how globalization has created a wider gap between underemployed attorneys and underrepresented citizens. He said they are working to study the transition of attorneys from law school into practice and from practice into retirement. He emphasized bar programs that are designed to carry legal aid to underrepresented citizens: the Pro Bono and the Modest Means programs. He reminded the committee that each citizen has a constitutional right to use the court system. But, if they cannot afford it, he said, it is a hollow promise.

Mr. James D. Gilson, President Elect, Utah State Bar, discussed the oversaturated legal market and how the bar is working to provide support to attorneys who are unemployed or underemployed.

Rep. Hall echoed the concern of not having enough legal jobs for attorneys. He recognized it as a current, serious problem of the state. He applauded the efforts of the bar to recognize and address the situation.

Chair McIff expressed his support of the Modest Means program and the mentoring program for new attorneys.

Mr. Ron Gordon, Executive Director, Commission on Criminal and Juvenile Justice, distributed and discussed, "Commission on Criminal and Juvenile Justice Agency Update." He said the commission's major initiative this year is the Justice Reinvestment Initiative. He stated that it is partnering with the Pew Charitable Trusts organization, which is assisting with data management to understand the driving forces behind the Utah prison population demographics and trends. He said this initiative will result in a set of recommendations that will be presented in the November interim meeting. He responded to questions from the committee.

Mr. Anthony W. Schofield, Chair, Judicial Performance Evaluation Commission, informed the committee that during the 2013 calendar year, the commission conducted performance evaluations on 65 judges. They also conducted 55 retention evaluations for judges who were up for retention election. The evaluations, he said, were not made public but were provided to the judges for their educational benefit. He said that Utah has a strong judiciary and that this process has worked well to improve judicial practices.

Ms. Joanne C. Slotnik, Executive Director, Judicial Performance Evaluation Commission, presented and discussed "Judicial Performance Evaluations." She said that, in the upcoming period of time, the commission will focus on its survey instruments to ensure they are functioning with the best practices. She explained the types of evaluations different judges receive. She said evaluations are based on a combination of attorney appearances and weighted case load produced by the court. She responded to questions from the committee.

#### **4. Expungement of Administrative Records – Priority Study Item**

Ms. Boulter gave a brief overview of the Utah Expungement Act and discussed "Utah Expungement Act Highlights" and Utah Code Title 77, Chapter 40. She responded to questions from the committee.

Rep. Eric K. Hutchings explained how complex the administrative records expungement process currently is. He said that 2014 General Session First Substitute H.B. 366, "Expungement Amendments" made it possible for the Board of Pardons and Parole to issue an order of expungement when granting a pardon, if deemed appropriate. He said criminal expungements are handled very well but expressed concern about the desire from state and federal agencies to be exempted out of the expungement process. He said agencies are hesitant to dispose of their records. He reiterated that currently an expungement has no practical application, because expungement records are still being held. He posed the question of whether expungement records should ever be made public. He took suggestions and questions from the committee.

#### **5. Other Items / Adjourn**

**MOTION:** Rep. Snow moved to adjourn the meeting. The motion passed unanimously with Sen. Hillyard, Sen. Urquhart, Rep. Christensen, Rep. Hall, and Rep. Perry absent for the vote.

Chair McIff adjourned the meeting at 12:03 p.m.